

STATE OF MICHIGAN  
COURT OF APPEALS

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RICHARD D. KNIGHT, d/b/a K-AIR, f/k/a  
KNIGHT AIR,

UNPUBLISHED  
May 5, 2009

Plaintiff-Appellant,

v

RHOADES AVIATION, INC.,

No. 282410  
Oakland Circuit Court  
LC No. 2002-040201-CZ

Defendant-Appellee,

and

JACK RHOADES,

Defendant.

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Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders dismissing his causes of action for breach of written contract pursuant to MCR 2.116(C)(10) and for breach of oral contract pursuant to MCR 2.504(B). We affirm.

First, plaintiff claims that the trial court erred when it dismissed his claim for breach of written contract pursuant to MCR 2.116(C)(10). We disagree. We review de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Although plaintiff claims otherwise, the contract language at issue in this case is not ambiguous. The threshold issue whether contract language is clear or ambiguous is a question of law for the trial court. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). "Courts must not create ambiguity where it does not exist." *Mahnich v Bell Co*, 256 Mich App 154, 159; 662 NW2d 830 (2003). The parties to the original agreements clearly set forth the terms of the purchase of the airplane and the subsequent operation of the airplane under defendant's 121 certificate in the purchasing and operating agreements. Although plaintiff appears to argue that defendant breached these written agreements by failing to perform maintenance on the airplane, the written contracts do not indicate that defendant was bound by such a requirement. In addition, both contracts specify that any amendment to the agreement be

made in writing, and plaintiff failed to produce a document amending the contracts to require defendant to perform maintenance on the aircraft. Therefore, plaintiff fails to provide any evidence to support his breach of written contract claim, and summary disposition of this claim in favor of defendant pursuant to MCR 2.116(C)(10) was appropriate.<sup>1</sup>

Next, plaintiff claims that the trial court erred when it granted summary disposition to defendant without permitting plaintiff to complete discovery. Plaintiff appears to claim that the trial court failed to permit him to complete discovery because it determined in its June 27, 2007, order that defendant had complied with earlier discovery orders when, according to plaintiff, defendant actually neglected to turn over certain Federal Aviation Administration (FAA) documents or answer certain interrogatories.<sup>2</sup> Yet plaintiff fails to establish that defendant's alleged refusal to turn over certain documents or answer interrogatories prevented plaintiff from uncovering factual support for his position.

First, plaintiff attaches to his brief a copy of interrogatories that he claimed defendant failed to answer, but he does not indicate, and the record does not reflect, that he moved the trial court to compel defendant to answer them. Further, the interrogatories that plaintiff submitted to defendant are little more than an extensive list of documents that plaintiff wanted defendant to produce. In its May 22, 2007, order, the trial court ordered defendant to make all records in its custody or control available to plaintiff and permitted plaintiff to inspect or make arrangements to copy the records. Plaintiff fails to explain how he was denied the opportunity to uncover factual support for his position as a result of defendant's alleged failure to answer his interrogatories when he was essentially given access to the requested documents.

To establish his claim that defendant failed to turn over certain FAA documents, plaintiff refers to an excerpt from the March 2007 deposition of Travis Brown, in which Brown indicated that defendant might have preserved correspondence with the FAA regarding plaintiff's airplane.<sup>3</sup> However, Brown also noted that he could not remember if the FAA sent defendant correspondence regarding plaintiff's airplane and noted that he would have to search through the company's extensive correspondence with the FAA to identify any relevant documents. In its May 22, 2007, order, the trial court gave defendant two additional weeks to make all relevant documents in its possession available to plaintiff to inspect and copy. Plaintiff apparently assumes that defendant had more relevant documents in its possession than it was willing to

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<sup>1</sup> Plaintiff also claims that the trial court should not have dismissed his claim for breach of written contract because defendant violated provisions of 14 CFR 121, which was incorporated into the agreement. However, plaintiff provides no case law to support his assertion that he has a private cause of action for breach of contract arising from defendant's alleged violation of a federal regulation. Accordingly, we will not address his claim of error further. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

<sup>2</sup> We review plaintiff's claim to determine "whether further discovery stands a fair chance of uncovering factual support for the opposing party's position." *Mowery v Crittenton Hosp*, 155 Mich App 711, 716; 400 NW2d 633 (1986).

<sup>3</sup> Brown is defendant's director of operations.

disclose, but he fails to identify any statement by the trial court or any evidence indicating that defendant's agents did not do what Brown had essentially suggested in his deposition, that is, search again through the company's correspondence, identify relevant documents, and turn them over to plaintiff before the discovery deadline. Consequently, plaintiff fails to establish that he was never provided with access to all relevant documents identified by the trial court or that defendant was withholding documents from him. Plaintiff's claim of error lacks merit.

Next, plaintiff claims that the trial court erred when it declined to admit the deposition testimony of three employees of the defendant company because MCR 2.303 and MCR 2.308 permitted plaintiff to introduce deposition testimony at trial. We disagree. Plaintiff appears to argue that the trial court should have admitted the deposition testimony of these witnesses because they were "located more than 100 miles from the courthouse." Yet, in his briefs, he fails to identify or present any affidavits or other information to establish that these witnesses were located at least 100 miles from the courthouse or were otherwise unavailable. Because plaintiff failed to develop his argument or produce any affidavits or other evidence to support his assertions of error, we will not consider this claim of error further. *Mitcham, supra* at 203.

In addition, plaintiff argues that the trial court erred when it denied him the opportunity to complete his proofs at trial regarding his claim of breach of oral contract before dismissing this cause of action pursuant to MCR 2.504(B)(2).<sup>4</sup> Plaintiff maintains that he presented evidence of numerous oral contracts with defendant, and that the trial court erred when it determined that only one oral contract was mentioned in the complaint, that the terms and conditions of and the parties to the contract had not been presented to the court, and that no factual scenario existed in which an enforceable contract existed.

However, under the circumstances surrounding this case, the trial court's decision to dismiss plaintiff's claim of breach of oral contract was reasonable. Although plaintiff alleged that Knight Air had entered *an* oral contract (as well as a written contract) to operate and maintain the Convair 240 aircraft in an airworthy condition, at trial plaintiff did not provide evidence regarding the existence, nature, or identity of the oral contract.<sup>5</sup> Plaintiff had an

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<sup>4</sup> MCR 2.504(B)(2) states:

In an action, claim, or hearing tried without a jury, after the presentation of the plaintiff's evidence, the court, on its own initiative, may dismiss, or the defendant, without waiving the defendant's right to offer evidence if the motion is not granted, may move for dismissal on the ground that, on the facts and the law, the plaintiff has no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517.

<sup>5</sup> Even during his testimony at trial, plaintiff failed to identify or describe this alleged contract. Instead, plaintiff continually referred to other informal agreements and arrangements made between the parties in the court of their business dealings, and he alleged that defendant's failures in fulfilling these agreements constituted a breach of various oral agreements.

adequate opportunity to present evidence to support his allegation of breach of contract during his case-in-chief—he had adequate opportunity to question Albert Robertson<sup>6</sup> when conducting his direct examination, and he could have subpoenaed additional witnesses to testify at trial. Also, although plaintiff could have attempted to again testify on redirect, the trial court had already determined that plaintiff was not a credible witness based on his testimony during his case-in-chief. Therefore, the trial court did not err when it dismissed plaintiff’s breach of oral contract claim pursuant to MCR 2.504.<sup>7</sup>

Finally, plaintiff argues that the trial court erred when it did not permit him to amend his pleadings pursuant to MCR 2.118(A)(2). We disagree. Because plaintiff asked to amend his complaint long after receiving defendant’s responsive pleadings, MCR 2.118(A)(2) governs. MCR 2.118(A)(2) permits the amendment of a pleading “only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.”<sup>8</sup> Plaintiff only moved to amend his pleadings at the end of his proofs in order to add multiple nebulous claims of breach of oral contract against defendant. The trial court correctly determined that, considering that the case had been going on for five years, plaintiff had ample opportunity to amend his pleadings. Justice does not require that the trial court permit plaintiff to amend his complaint with a nebulous cause of action in a last-ditch effort to save his case. In fact, the trial court correctly noted that amendment of the pleadings at this late date would greatly prejudice defendant; defendant had prepared a defense to plaintiff’s claim that defendant had breached one oral agreement to provide regular maintenance to plaintiff’s airplane, not to a claim that defendant had breached hundreds of unspecified oral agreements. See generally *Weymers v Khera*, 454 Mich 639, 658-662; 563 NW2d 647 (1997). Accordingly, the trial court did not abuse its discretion when it refused to permit plaintiff to amend his pleadings.

Affirmed.

/s/ William C. Whitbeck  
/s/ Peter D. O’Connell  
/s/ Donald S. Owens

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<sup>6</sup> Robertson is the general manager and secretary/treasurer of Rhoades Aviation.

<sup>7</sup> Plaintiff also alleges that the trial court failed to make detailed findings of fact and conclusions of law. Because plaintiff failed to include this claim in his statement of the questions presented or to develop this argument in his brief, we need not address this claim of error. MCR 7.212(C)(5); *Mitcham, supra* at 203; *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000).

<sup>8</sup> “[D]ecisions granting or denying motions to amend pleadings[] are within the sound discretion of the trial court and reversal is only appropriate when the trial court abuses that discretion.” *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).